

**PARTICIPATING ADDENDUM
for
STATE OF TEXAS**

WESTERN STATES CONTRACTING ALLIANCE

**INTERNATIONAL BUSINESS MACHINES CORPORATION
to
MASTER PRICE AGREEMENT**

94-00151

A. SCOPE:

The State of Texas, acting by and through the Department of Information Resources (DIR), is the Participating Entity under this Participating Addendum having the authority to enter into this Participating Addendum on behalf of Texas state agencies as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and local governments as defined in Section 791.003, Texas Government Code.

B. APPLICABLE APPROVED PURCHASING AGREEMENT

In addition to the terms contained in the Master Price Agreement, the parties agree that the following terms and conditions will apply to all purchases of Products and Services under the Master Price Agreement. All Procuring Agencies (as defined below) agree to these terms and conditions by procuring Products and Services under this Participating Addendum. This Agreement is limited to the sale of IBM microcomputers as awarded to IBM based on the Texas Market Place Posting Number DIR-61900-HWARE.

1. Definitions

Except for the changes or additions indicated below, the definitions set forth in the Master Price Agreement apply to this Participating Addendum.

"Customer-set-up Machine" is an IBM Machine that the Procuring Agency installs according to Contractor's instructions.

"Date of Installation" is the following: (a) for an IBM Machine Contractor is responsible for installing, the business day after the day Contractor installs it or, if Procuring Agency defers installation, makes it available to the Procuring Agency for subsequent installation by Contractor; (b) for a Customer-set-up Machine and a non-IBM Machine, the second business day after receipt of the Machine by the Procuring Agency; and (c) for a Program, the latest of (i) the day after its testing period ends, (ii) the second business day after receipt of the Program by the Procuring Agency, or (iii) the date, specified in a Transaction Document, on which Contractor authorizes the Procuring Agency to make a copy of the Program, or (iv) the date the Procuring Agency distributes a copy of the chargeable component in support of Procuring Agency's authorized use of the Program.

"Designated Machine" is either 1) the machine on which the Procuring Agency will use a Program for processing and which Contractor requires the Procuring Agency to identify to Contractor by type/model and serial number, or 2) any machine on which Procuring Agency uses the Program if Contractor does not require Procuring Agency to provide this identification to Contractor.

"Machine" is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that Contractor may provide to the Procuring Agency.

"Materials" are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that Contractor may deliver to the Procuring Agency as part of a Service. The term "Materials" does not include Programs or Licensed Internal Code.

"Procuring Agency" means any Texas State Agency as defined in Section 2054.003, Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and local Governments as defined in Section 791.003, Government Code

"Program" is the following, including the original and all whole or partial copies: (1) machine-readable instructions and data; (2) components; (3) audio-visual content (such as images, text, recordings, or pictures); and (4) related licensed materials. The term "Program" includes an IBM Program and any non-IBM Program that Contractor may provide to a Procuring Agency. The term does not include Licensed Internal Code or Materials.

"Relationship Price" is a special bid or discounted price to a select customer based on an index to list price. This price applies to a subset of the entire catalogue of PCD offerings for a quantity of one or more. Relationship Price does not include Transaction Prices, which are special bids or discounted prices for single customer opportunities that are generally based on volume purchases and a competitive bid for a select product or group of products offered for a limited period of time. Relationship Price also does not include Announced Promotion Price, Educational Discount Price, General Price Reduction Price or Large Order Negotiated Price, or Price Agreements with Procuring Agencies, as these terms are defined in the WSCA Master Price Agreement.

"Specifications" is a document that provides information specific to a Product. For an IBM Machine the document is called "Official Published Specifications." For an IBM Program, it is called "Licensed Program Specifications" or "License Information."

"Specified Operating Environment" is the Machines and Programs with which a Program is designed to operate, as described in the Program's Specifications.

2. Agreement Structure

Some Products have terms in addition to those specified in this Addendum. Contractor provides the additional terms in documents called "Attachments," which are also part of this Addendum. Attachments will be signed by both the Procuring Agency and the Contractor if requested by either party.

Additional details of each transaction may be set out in "Transaction Documents" such as addenda, exhibits, invoices, and supplements, all of which are part of this Addendum that confirm the specific details of the transaction. The Procuring Agency accepts the terms of these documents by 1) signing them, 2) ordering a Product from Contractor, or 3) making any payment for a Product. A Product becomes subject to this Agreement when Contractor accepts the Procuring Agency's order by sending the Procuring Agency a Transaction Document or by shipping the Machine or making the Program available to the Procuring Agency.

Each purchase order issued under this Agreement that is accepted by Contractor will be subject to this Agreement. Purchase transactions between the parties shall be governed by the terms and conditions of this Agreement and any Attachments or Transaction Documents thereto. In the event of a conflict between a term of this Agreement (or an Attachment or Transaction Document to the Agreement) and a purchase order issued by a Procuring Agency, the Agreement term shall control. No additional term and condition of a purchase order issued by a Procuring Agency can weaken a term or condition of this Agreement.

3. Payment Provisions

Invoices will be submitted by Contractor to the Procuring Agency. Invoices are due and payable thirty (30) days after receipt of a correct invoice by the Procuring Agency. The Procuring Agency agrees to pay as specified by Contractor in the invoice, including any applicable late payment fee. IBM will pay the standard shipping charges for all orders under this Agreement. The Procuring Agency may request expedited shipping for an additional charge. The Participating Entity represents that all Procuring Agencies are tax exempt. The Procuring Agency agrees to provide documentation of its tax-exempt status to Contractor upon request. The Procuring Agency is responsible for personal property taxes, if any, for each Product from the date Contractor ships it to the Procuring Agency.

4. Responsibilities

As used in this Section "State" shall mean DIR and Procuring Agencies. Both the Contractor and the State agree that under this Agreement:

- a. neither the Contractor nor the State grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent except as indicated in Section 24 "Promotion of Agreement";
- b. all information transferred pursuant to this contract is nonconfidential. However, if either party requires the exchange of confidential information it will be made in accordance with the terms of a separate agreement between the parties;
- c. both the Contractor and Participating Entity are free to enter into similar agreements with others;
- d. the Contractor and the State each grant the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;
- e. the Contractor and the State may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user id") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity;

- f. both the Contractor and the State will each allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;
- g. neither the Contractor nor the State is responsible for failure to fulfill any obligations due to causes beyond its controls; and
- h. neither the Contractor nor the Participating Entity may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither the Contractor nor the Participating Entity will unreasonably withhold such consent. The assignment of this Agreement within the Enterprise of which either the Contractor or Participating Entity is a part or to a successor organization by merger, acquisition or legislative mandate does not require the consent of the other.

The Procuring Agency agrees:

- a. to acquire Products only for its own use, and not for remarketing or leasing;
- b. to allow Contractor to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts Contractor removes become Contractor's property. The Procuring Agency represents that it has the permission from the owner and any lien holders to transfer ownership and possession of removed parts to Contractor;
- c. that the Procuring Agency is responsible for the results obtained from use of the Products and Services;
- d. to provide Contractor with sufficient, free, and safe access to your facilities for Contractor to fulfill its obligations; and
- e. to comply with all applicable export and import laws and regulations.

5. Patents and Copyrights

For purposes of this section, the term "Product" includes Materials (alone or in combination with Products Contractor provides to the Procuring Agency as a system) and Licensed Internal Code.

If a third party claims that a Product Contractor provides to the Procuring Agency infringes that party's patent or copyright, Contractor will defend the Procuring Agency against that claim at Contractor's expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that the Procuring Agency: 1) promptly notifies Contractor in writing of the claim; and 2) allows Contractor to control, and cooperates with Contractor in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, the Procuring Agency agrees to permit Contractor to enable the Procuring Agency to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If Contractor determines that none of these alternatives is reasonably available, the Procuring Agency agrees to return the Product to Contractor on Contractor's written request. Contractor will then give the Procuring Agency a credit equal to: 1) for a Machine, the Procuring Agency's net book value determined in accordance with generally-accepted accounting principles; 2) for a Program, the amount paid by the Procuring Agency or 12 months' charges (whichever is less); and 3) for Materials, the amount the Procuring Agency paid Contractor for the Materials.

This is Contractor's entire obligation to the Procuring Agency regarding any claim of

infringement and the Procuring Agency's exclusive remedy, notwithstanding any provision to the contrary in the Agreement.

Contractor has no obligation regarding any claim based on any of the following: 1) anything the Procuring Agency provides which is incorporated into a Product; 2) the Procuring Agency's modification of a Product, or a Program's use in other than its Specified Operating Environment; 3) the combination, operation, or use of a Product with other Products not provided by Contractor as a system, or the combination, operation, or use of a Product with any product, data, or apparatus that Contractor did not provide; or 4) infringement by a non-IBM Product alone, as opposed to its combination with Products Contractor provides to the Procuring Agency as a system.

6. Limitation of Liability

Circumstances may arise where, because of a default on the Contractor's part or other liability, the Procuring Agency is entitled to recover damages from Contractor. In each such instance, regardless of the basis on which the Procuring Agency is entitled to claim damages from Contractor (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Contractor is liable for no more than: (a) payments referred to in Contractor's patents and copyrights terms described above; (b) damages for bodily injury (including death) and damage to real property and tangible personal property; and (c) the amount of any other actual direct damages, up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials and Licensed Internal Code. This limit also applies to any of Contractor's subcontractors and Program developers. It is the maximum for which Contractor and its subcontractors are collectively responsible.

Under no circumstances is Contractor, its subcontractors, or its Program developers liable for any of the following: (a) third-party claims against the Procuring Agency for damages (other than those under items (a) and (b) in the paragraph above); (b) loss of, or damage to, the Procuring Agency's records or data; or (c) special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if Contractor is informed of their possibility.

7. Warranties

7.1 Warranty for IBM Machines

For each IBM Machine, Contractor warrants that it:

1. is free from defects in materials and workmanship; and
2. conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. The warranty period will be for the period of time as outlined in IBM then published specifications for the product being purchased. During the warranty period, Contractor will provide repair and exchange Service for the Machine, without charge, under the type of Service that Contractor designates for the Machine.

If a Machine does not function as warranted during the warranty period and Contractor is

unable to either 1) make it do so, or 2) replace it with one that is at least functionally equivalent, the Procuring Agency may return it to Contractor and Contractor will refund the Procuring Agency its money.

Additional terms regarding Service for Machines during and after the warranty period are contained in Section 10. Services.

7.2 Warranty for IBM Programs

For each warranted IBM Program, Contractor warrants that when it is used in the Specified Operating Environment, it will conform to its Specifications.

The warranty period for a Program expires when its Program Services are no longer available. During the warranty period, Contractor provides defect-related Program Services without charge. Program Services are available for a warranted Product for at least one year following its general availability.

If a Program does not function as warranted during the first year after the Procuring Agency obtains its license and Contractor is unable to make it do so, the Procuring Agency may return the Program to Contractor and Contractor will refund the Procuring Agency its money. To be eligible, the Procuring Agency must have obtained its license while Program Services (regardless of the remaining duration) were available for it. Additional terms regarding Program Services are contained in Section 9. Programs.

7.3 Warranty for IBM Services

For each IBM Service, Contractor warrants that Contractor performs it:

1. using reasonable care and skill; and
2. according to its current description (including any completion criteria) contained in this Agreement, an Attachment or a Transaction Document.

7.4 Warranty for Systems

Where Contractor provides Products to a Procuring Agency as a system, Contractor warrants that they are compatible and will operate with one another. This warranty is in addition to Contractor's other applicable warranties.

7.5 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, Contractor's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Procuring Agency, removal or alteration of Product or parts identification labels, or failure caused by a product for which Contractor is not responsible.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND

REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.6 Items Not Covered by Warranty

Contractor does not warrant uninterrupted or error-free operation of a Product or Service or that Contractor will correct all defects.

Contractor will identify IBM Products that Contractor does not warrant.

Unless Contractor specifies otherwise, Contractor provides Materials, non-IBM Products, and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties which Contractor will pass through to the Procuring Agency.

8. Machines

Each IBM Machine is manufactured from new parts or new and used parts. In some cases, a Machine may not be new and may have been previously installed. Regardless, Contractor's appropriate warranty terms apply. Previously installed Machines can be provided with the Procuring Agency's approval.

8.1 Title and Risk of Loss

Contractor transfers title to the Procuring Agency, or if Procuring Agency chooses, Procuring Agency's lessor upon receipt of the Machine by the Procuring Agency. However, Contractor reserves a purchase money interest in the Machine until Contractor receives the amount due. For a feature, conversion, or upgrade involving the removal of parts which become the Contractor's property, Contractor reserves the security interest until Contractor receives the amounts due and the removed parts. Procuring Agency agrees to sign an appropriate document to permit Contractor to perfect its purchase money security interest.

Contractor bears the risk of loss for the Machine up to and including its Date of Installation. Thereafter, the Procuring Agency assumes the risk.

8.2 Installation

For a Machine to function properly, it must be installed in a suitable physical environment. The Procuring Agency agrees to provide an environment meeting the specified requirements for a Machine.

Contractor has standard installation procedures. Contractor will successfully complete these procedures before Contractor considers an IBM Machine (other than a Machine for which the Procuring Agency defers installation or a Customer-set-up Machine) installed.

The Procuring Agency is responsible for installing a Customer-set-up Machine (Contractor provides instructions to enable the Procuring Agency to do so) and a non-IBM Machine.

Machine Features, Conversions, and Upgrades

Contractor sells features, conversions, and upgrades for installation on Machines, and in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to Contractor. As applicable, the Procuring Agency represents that it has permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become Contractor's property) to Contractor. The Procuring Agency further represents that all removed parts are genuine and unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part. The Procuring Agency agrees to allow Contractor to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, Contractor may terminate the transaction and Procuring Agency must return the feature, conversion, or upgrade to Contractor at Procuring Agency's expense.

8.3 Licensed Internal Code

Certain Machines Contractor specifies (called "Specific Machines") use Licensed Internal Code (called "Code"). Contractor owns copyrights in Code or has the right to license Code. Contractor or a third party own all copies of Code, including all copies made from them. Contractor will identify each Specific Machine in a Transaction Document. If Procuring Agency is the rightful possessor of a Specific Machine, Contractor grants Procuring Agency a license to use the Code (or any replacement Contractor provides) on, or in conjunction with, only the Specific Machine, designated by serial number, for which the Code is provided. Contractor licenses the Code to only one rightful possessor at a time.

Under each license, Contractor authorizes the Procuring Agency to do only the following:

- a. execute the Code to enable the Specific Machine to function according to its Specifications;
- b. make a backup or archival copy of the Code (unless Contractor makes one available for Procuring Agency's use), provided the Procuring Agency reproduces the copyright notice and other legend of ownership on the copy. The Procuring Agency may only use the copy to replace the original, when necessary; and
- c. execute and display the Code as necessary to maintain the Specific Machine.

The Procuring Agency agrees to acquire any replacement for, or additional copy of, Code directly from Contractor in accordance with Contractor's standard policies and practices. The Procuring Agency also agrees to use that Code under these terms.

The Procuring Agency may transfer possession of the Code to another party only with the transfer of the Specific Machine. If the Procuring Agency does so, it must 1) destroy all its copies of the Code that were not provided by Contractor, 2) either give the other party all its Contractor-provided copies of the Code or destroy them, and 3) notify the other party of these terms. Contractor licenses the other party when it accepts these terms by initial use of the Code. These terms apply to all Code the Procuring Agency acquires from any source.

The Procuring Agency's license terminates when it no longer rightfully possesses the Specific Machine.

Actions Procuring Agency May Not Take

The Procuring Agency agrees to use the Code only as authorized above. The Procuring Agency may not do, for example, any of the following:

- a. Otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as Contractor may authorize in the Specific Machine's Specifications or in writing to the Procuring Agency;
- b. Reverse assemble, reverse compile, or otherwise translate the Code unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. Sublicense or assign the license for the Code; or
- d. Lease the Code or any copy of it.

8.4 Machine Code

For certain Machines, Contractor may provide basic input/output system code, utilities, diagnostics, device drivers, or microcode (collectively called "Machine Code"). This Machine Code is licensed under the terms of the agreement provided with it.

9. Programs

9.1 License

When Contractor accepts the Procuring Agency's order, Contractor grants the Procuring Agency a non-exclusive, nontransferable license to use the Program. Programs are owned by International Business Machines Corporation or one of its subsidiaries ("IBM" or "Contractor") or Contractor's supplier and are copyrighted and licensed (not sold).

9.2 License Details

Under each license, Contractor authorizes the Procuring Agency to:

- a. use the Program's machine-readable portion on only the Designated Machine. If the Designate Machine is inoperable, the Procuring Agency may use another Machine temporarily. If the Designated Machine cannot assemble or compile the Program, the Procuring Agency may assemble or compile the Program on another Machine.

If the Procuring Agency changes a Designated Machine previously identified to Contractor, the Procuring Agency agrees to notify Contractor of the change and its effective date;

- b. use the Program to the extent of authorizations the Procuring Agency has acquired;

- c. make and install copies of the Program, to support the level of use authorized, provide the Procuring Agency reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the Program Contractor 1) provides in source code form, or 2) mark restricted (for example, "Restricted Materials of IBM") only to:
 - i) resolve problems related to the use of the Program, and
 - ii) modify the Program so that it will work together with other products.

The Procuring Agency agrees to comply with any additional terms Contractor may place on a Program. Contractor identifies these in the Program's Specifications or in a Transaction Document.

Actions Procuring Agency May Not Take

The Procuring Agency agrees not to:

- 1. reverse assemble, reverse compile, or otherwise translate the Program; or
- 2. sublicense, rent or lease the Program.

9.3 Program Components Not Used on the Designated Machines

Some Programs have components that are designed for use on machines other than the Designated Machines on which the Program is used. The Procuring Agency may make copies of a component and its documentation in support of the Procuring Agency's authorized use of the Program provided the Procuring Agency notifies Contractor of the component's actual date of distribution.

9.4 Distributed System License Option

For some Programs, the Procuring Agency may make a copy under a Distributed System License Option (called a "DSLO" copy). Contractor charges less for a DSLO copy than it does for the original license (called the "Basic" license). In return for the lesser charge, the Procuring Agency agrees to do the following while licensed under a DSLO:

- 1. have a Basic license for the Program;
- 2. provide problem determination and receive Program Services (if any) only through the location of the Basic license; and
- 3. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that Contractor provides for the Basic license.

9.5 Program Testing

Contractor provides a testing period for certain Programs to help the Procuring Agency evaluate if they meet its needs. If Contractor offers a testing period, it will start 1) the second business day after receipt of the Program by the Procuring Agency, or 2) on another date specified in a Transaction Document. Contractor will inform the Procuring Agency of the duration of the Program's testing period.

Contractor does not provide testing periods for DSLO copies.

9.6 Packaged Programs

Contractor provides certain Programs together with their own license agreements. These Programs are licensed under the terms of the agreements provided with them.

9.7 Program Protection

For each Program, the Procuring Agency agrees to: 1) ensure that anyone who uses it (accessed either locally or remotely) does so only for the Procuring Agency's authorized use and complies with Contractor's terms regarding Programs; and 2) maintain a record of all copies and provide it to Contractor at Contractor's request.

9.8 Program Services

Contractor provides Program Services for warranted Programs and for selected other Programs. If Contractor can reproduce the Procuring Agency's reported problem in the Specified Operating Environment, Contractor will issue defect correction information, a restriction, or a bypass. Contractor provides Program Services for only the unmodified portion of a current release of a Program. Contractor provides Program Services 1) on an on-going basis (with at least six months' written notice before Contractor terminates Program Services), 2) until the date Contractor specifies, or 3) for a period Contractor specifies.

9.9 License Termination

The Procuring Agency may terminate the license for a Program on one's month's written notice or at any time during the Program's testing period. If the Procuring Agency does so, its authorization to use the Program is also terminated.

Licenses for certain replacement Programs may be acquired for an upgrade charge. When the Procuring Agency acquires these replacement Programs, the Procuring Agency agrees to terminate the license of the replaced Programs when charges become due, unless Contractor specifies otherwise.

Contractor may terminate the Procuring Agency's license if Procuring Agency fails to comply with its terms. If Contractor does so, the Procuring Agency's authorization to use the Program is also terminated.

10. Services

10.1 Types of Services

Services may be either standard offerings or customized to the Procuring Agency's specific requirements. Each service transaction may include one or more Services that: 1) expire at task completion or an agreed upon date; 2) automatically renew as another transaction with a specified contract period. Renewals will continue until either the Procuring Agency or the Contractor terminates the Service; or 3) do not expire and are

available for the Procuring Agency's use until either the Procuring Agency or the Contractor terminates the Service.

10.2 Personnel

Both the Contractor and the Procuring Agency are each responsible for the supervision, direction, and control of its own personnel. Contractor reserves the right to determine the assignment of its personnel. Contractor may subcontract a Service, or any part of it, to subcontractors selected by Contractor.

10.3 Materials Ownership and License

Contractor will specify Materials to be delivered to the Procuring Agency. Type II Materials are those created during the Service performance period or otherwise (such as those that preexist the Service), in which Contractor or third parties have all right, title, and interest (including ownership of copyright). Contractor will deliver one copy of the specified Materials to the Procuring Agency. Contractor grants the Procuring Agency an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the Procuring Agency's enterprise only, copies of Type II Materials. Both the Contractor and Procuring Agency each agrees to reproduce the copyright notice and other legend of ownership on any copies made under the licenses granted in this Section. Any idea, concept, know-how, or technique which relates to the subject matter of a Service and is developed or provided by either the Contractor or the Procuring Agency, or jointly by both of us, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either of us.

10.4 Changes to Service Terms

Contractor may change the terms of Services that are renewable or non-expiring by giving the Procuring Agency three months' written notice. However, these changes are not retroactive. They apply immediately to renewal transactions and as of the effective date Contractor specifies in the notice to all existing transactions. If Contractor makes a change to the terms of a renewable Service that 1) affects the Procuring Agency's current contract period and 2) the Procuring Agency considers unfavorable, on your request, Contractor will defer it until the end of that contract period.

When both the Contractor and Procuring Agency agree to change any Services statement of work other than as described above, Contractor will prepare a written description of the agreed change (called a "Change Authorization"), which both the Procuring Agency and the Contractor must sign. The terms of the Change Authorization prevail over those of the statement of work and any previous Change Authorizations.

10.5 Renewal

A Procuring Agency may renew an existing agreement for an additional contract period of the same length by issuing a purchase order to Contractor pursuant to this Agreement.

10.6 Termination and Withdrawal

Either the Procuring Agency or the Contractor may terminate a Service if the other does not meet its obligations concerning the Service.

The Procuring Agency may terminate a non-expiring Service, without adjustment charge, on one month's written notice to Contractor provided the Procuring Agency has met all minimum requirements specified in the applicable Attachments and Transaction Documents.

The Procuring Agency may terminate a renewable Service or a non-expiring maintenance Service, without adjustment charge, on notice to Contractor provided the Procuring Agency has met all minimum requirements specified in the applicable Attachments and Transaction Documents and any of the following circumstances occur: 1) the Procuring Agency permanently removes the eligible Product, for which the Service is provided, from productive use within its enterprise; 2) the eligible location, for which Service is provided, is no longer controlled by the Procuring Agency (for example, because of sale or closing of the facility); 3) an increase in the Services charges, either alone or in combination with prior increases over the previous twelve months, is more than the maximum specified in the applicable Service Transaction Document. If no maximum is specified, then this circumstance does not apply; or 4) the Machine has been under maintenance Services for at least six months and the Procuring Agency gives Contractor one month's written notice prior to terminating the maintenance Service.

For all other circumstances, the Procuring Agency may terminate an expiring or renewable Service on one month's written notice to Contractor but such termination will result in adjustment charges equal to the lesser of: 1) the charges remaining to complete the contract period; or 2) any of the following if specified in a Transaction Document, either (a) the charges remaining to complete the contract period multiplied by the adjustment factor specified, or (b) the amount specified.

The Procuring Agency agrees to pay Contractor for all Services Contractor provides and any Products and Materials Contractor delivers through the Service termination date.

Contractor may withdraw a renewable or non-expiring Service or support for an eligible Product on three months' written notice to the Procuring Agency. If Contractor withdraws a Service for which the Procuring Agency has prepaid and Contractor has not yet fully provided it to the Procuring Agency, Contractor will give the Procuring Agency a prorated refund.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

10.7 Services for Machines (during and after warranty)

Contractor provides certain types of repair and exchange Services either at the Procuring Agency's location or at a service center to keep Machines in, or restore them to conformance with their Specifications. Contractor will inform the Procuring Agency of the available types of Service for a Machine. Contractor may repair the failing Machine or exchange it at Contractor's discretion.

When the type of Service requires that the Procuring Agency deliver the failing Machine to Contractor, the Procuring Agency agrees to ship it suitably packaged (prepaid unless Contractor specifies otherwise) to a location Contractor designates. After Contractor has repaired or exchanged the Machine, Contractor will return it to the Procuring Agency at

Contractor's expense unless Contractor specifies otherwise. Contractor is responsible for loss of, or damage to, the Procuring Agency's Machine while it is 1) in Contractor's possession or 2) in transit in those cases where Contractor is responsible for the transportation charges.

The Procuring Agency agrees to: 1) obtain authorization from the owner to have Contractor service a Machine that the Procuring Agency does not own; and 2) where applicable, before Contractor provides Service (a) follow the problem determination, problem analysis, and service request procedures that Contractor provides, (b) secure all programs, data, and funds contained in a Machine, and (c) inform Contractor of changes in the Machine's location.

When Service involves the exchange of a Machine or part, the item Contractor replaces becomes Contractor's property and the replacement becomes the Procuring Agency's. The Procuring Agency represents that all removed items are genuine and unaltered. The replacement may not be new, but it will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced part. Before Contractor exchanges a Machine or part, the Procuring Agency agrees to remove all features, parts, options, alterations; and attachments not under Contractor's service. The Procuring Agency also agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Any feature, conversion, or upgrade Contractor services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

Repair and exchange Services do not cover:

1. accessories, supply items, and certain parts, such as batteries, frames, and covers;
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by the Procuring Agency;
3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which Contractor is not responsible; or
5. service of Machine alterations.

Contractor manages and installs engineering changes that apply to IBM Machines and may also perform preventive maintenance.

Contractor provides maintenance Services for selected non-IBM Machines.

10.8 Maintenance Coverage

When the Procuring Agency orders Machine maintenance Services under this Agreement, Contractor will inform the Procuring Agency of the date on which maintenance Services will begin. Contractor may inspect Machines within one month following that date. If the Machine is not in an acceptable condition for service, the

Procuring Agency may have the Contractor restore it for a charge. Alternatively, the Procuring Agency may withdraw its request for maintenance Services. However, the Procuring Agency will be charged for any maintenance Services which Contractor performed at Procuring Agency's request.

11. Administration Reporting and Fees

Contractor agrees to provide a monthly sales report to the Texas DIR Primary Contact (paragraph D. below) within fifteen (15) days after the end of the month being reported. The report shall include the gross Texas sales for the period just ended. The monthly report will include the Procuring Agency name, purchase order number, product, quantity, unit price and extended price. The monthly report will also include adjustments from prior reporting periods, if applicable. The monthly sales report will be submitted electronically to the Texas DIR Primary Contact. Reports are required even if no activity occurred during the reporting period.

The Contractor shall submit a check payable to Texas Department of Information Resources for an amount equal to three quarters of one percent (0.0075) of the Net Sales for the period (the "Administrative Fee"). The Net Sales shall be calculated by subtracting from the gross sales for the period any amounts refunded to Procuring Agencies during the period. The Net Sales will not include sales tax. The check for the Administrative Fee will be submitted by the last day of the month following the end of the reporting period, for example, if the reporting period ends March 31 the Administrative Fee would be due the last day of April. DIR may change its Administrative Fee upward or downward during the term of this Agreement upon sixty (60) days advance written notice to Contractor. The administrative fee to be collected by IBM on behalf of DIR shall be included in the charges for the Products and Services set forth in IBM's DIR WSCA ESS.

The total Administrative Fee due shall be not less than \$40,000 for each 12 month period (the "Annual Period"). The first Annual Period will be from August 1, 2001 through June 30, 2002. The amount due for the initial quarter (July 1, 2001 - September 30, 2001) will be prorated based on the number of days remaining in the quarter after the execution of this Participating Addendum by both parties. Until payment of \$40,000 in Administrative Fees is made in an Annual Period, the Contractor will administer payment of the Administrative Fees to DIR in the following manner:

1. For each of the first two months of a calendar quarter, Contractor will submit a check to DIR for \$3,334 each month.
2. At the end of the third month of the quarter, Contractor will determine the Net Sales for the quarter and submit a check to DIR for either: (a) three quarters of one percent (0.0075) of the Net Sales for the quarter minus payments already paid to DIR for the quarter; or (b) \$3,334; whichever is greater.
3. After the Contractor has paid DIR \$40,000 in Administrative Fees for an Annual Period, the Contractor will pay DIR the Administrative Fee on a monthly basis based on Net Sales as described in Paragraph 11. b. above.
4. At the end of each Annual Period Contractor will reconcile the Administrative Fees owed to DIR for such Annual Period. The reconciliation will result in the total

Administrative Fee payments to DIR for the Annual Period being: (a) three quarters of one percent (0.0075) of the Net Sales for the Annual Period; or (b) \$40,000; whichever is greater.

12. IBM Return Policy

If the Procuring Agency is acquiring Personal Computer Products (IBM Personal Computers, Intellistation Workstations, ThinkPad Notebooks, Netfinity Servers, Options by IBM, Accessories and related Programs) from Contractor, the Procuring Agency may return the Products to Contractor for any reason within 30 days of delivery and obtain a refund or credit (excluding shipping and handling charges). Contractor does not provide refunds for portions of a packaged offering provided at a single price. The Procuring Agency may, of course, return the complete package for a refund. To qualify for this credit or refund (as applicable), the Procuring Agency must call Contractor at 1-800-426-7235 within 30 days after the date Contractor delivers the Product to the Procuring Agency to obtain a return-authorization form. The Procuring Agency must return the Product, including all documentation and accessories, intact and in its original packaging, to a Contractor designated location by the date Contractor specifies. A copy of your invoice, the return-authorization form, and the shipping label must accompany the return. A restocking fee not greater than two percent (2%) of the original order price of the item will be charged.

13. Contractor Certifications

Contractor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or Service to a public servant in connection with this Agreement; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 31.006 of the Texas Family Code and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR, the Procuring Agency or any of their employees for participating in the preparation of this Agreement; and (v) during the term of this Price Agreement, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

14. Required Consents

The Procuring Agency will promptly obtain and provide to Contractor all Required Consents necessary for Contractor to provide Services under this Pricing Agreement. A Required Consent means any consents or approvals required to give Contractor and Contractor's subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware and other products that the Procuring Agency uses, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

To the extent allowed by Texas law, the Procuring Agency will indemnify, defend and hold Contractor, Contractor's affiliates and subcontractors, harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (including patent and copyright infringement) made against Contractor or Contractor's affiliates or subcontractors, alleged to have occurred as a result of the Procuring Agency's failure to provide any Required Consents.

Contractor will be relieved of the performance of any obligations that may be affected by the Procuring Agency's failure to promptly obtain and provide any Required Consents to Contractor.

15. Technology Access

Contractor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments (Tex. Government Code Section 2157.005). Accordingly, Contractor represents and warrants to DIR and each Procuring Agency purchasing products under this Agreement that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar State or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

16. Commodity Software

Texas Government Code, Section 2157.068 requires State Agencies and State of Texas Institutions of Higher Education to buy commodity software in accordance with contracts developed by DIR unless the agency obtains a waiver from DIR. Therefore, Contractor agrees to coordinate all commodity software sales made coincident to this Agreement through existing DIR contracts if available.

17. Texas Public Information Act

Contractor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Contractor also acknowledges that DIR will not only comply with the Texas Public Information Act, but also all the opinions of the Attorney's General's office concerning this Act.

18. Dispute Resolution

The dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used to attempt to resolve any claim for breach of contract made by the Contractor. A copy of Chapter 2260 is attached hereto as Exhibit A for reference.

To initiate the process, the Contractor shall submit written notice, as required by Subchapter B, to Patrick W. Hogan, DIR's Director of Business Operations, with a required copy to Renee Mauzy, DIR's General Counsel. The notice shall specifically state the provisions of Chapter 2260, Subchapter B, Government Code, are being invoked. A copy of the notice shall be given to all other representatives of DIR and the Contractor who are entitled to notice under the contract.

This Agreement shall be governed by the laws of the State of Texas and venue shall be in any court of competent jurisdiction in Travis County, Texas.

19. Buy Texas

With respect to all services, if any, purchased under this Agreement, Contractor represents and warrants that it shall buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials. Contractor agrees to make reasonable efforts to comply with this provision. Any breach of this paragraph by Contractor shall not be considered a material breach of this Contract. When requested by DIR, Contractor shall timely provide documentation satisfactory to DIR evidencing the use of Texas products and materials for providing any services provided under this Agreement. If Contractor is unable to find Texas products and materials to use in providing any services provided hereunder, upon DIR's request, Contractor shall provide documentation satisfactory to DIR evidencing Contractor's good faith efforts to purchase and use Texas products and materials in providing services hereunder.

20. Ability to Conduct Business in Texas

The Contractor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas or any of its political subdivisions.

Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, in accordance with Section 403.055(h), Government Code, any payments Contractor is owed under this Agreement will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

Contractor is a "Qualified Information Systems Vendor" as defined in Section 2157.001 of the Texas Government Code. All Products and Services offered to Procuring Agencies under this Agreement are listed in Contractor's catalogue on file with the General Services Commission.

DIR is prevented by law from selling products or services to other than governmental entities as defined in Texas Government Code, Section 2251.001 and Texas Education

21. Impracticability of Performance

A party may be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. A Procuring Agency may terminate a purchase order if it is determined by the Procuring Agency that Contractor will not be able to deliver product or services in a timely manner as a result of the above conditions to meet the business needs of the Procuring Agency.

22. Promotion of Agreement

Contractor may use the DIR logo in the promotion of this Agreement to Procuring Agencies with the following stipulations: (a) the logo may not be modified in any way; (b) when displayed, the size of the DIR logo must be equal to or smaller than the Contractor's logo; (c) the sole use of the DIR logo will be to communicate the availability of the Products and Services available under this Agreement to Procuring Agencies; and (d) any other use of the DIR logo requires DIR's prior written approval.

The DIR may use the Contractor's name and logo in the promotion of this Agreement to Procuring Agencies to communicate the Products and Services available under this Agreement to Procuring Agencies with the following stipulations: (a) use of the logo may be on the DIR Web Site or on printed materials distributed to Procuring Agencies; (b) DIR agrees to comply with any guidelines provided by Contractor on the proper use of Contractor's logo; and (c) any other use of Contractor's name or logo requires Contractor's prior written approval.

If Contractor is contacted by, or contacts, a potential Procuring Agency concerning buying information resources technologies that are already available under this Agreement, Contractor will use reasonable efforts to make the potential Procuring Agency aware of this Agreement and the ability of the potential Procuring Agency to buy hereunder.

23. Suit or Pending Proceedings

To the best of the Contractor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Contractor, which if determined adversely to the Contractor will have a material adverse effect on the ability of the Contractor to fulfill its obligations under this Agreement.

24. Training

The Contractor agrees to provide product overview training to DIR at no charge. The training will be held within the Austin area at times mutually agreed to by the Contractor and DIR.

25. Prices

In addition to the Price Guarantee in Section 9 of the WSCA Master Price Agreement, IBM intends to provide DIR the lowest advertised Relationship Price offered by IBM to any other national cooperative contract approved by IBM for Texas governmental entities for comparable products, terms and conditions. If at any time during the term of this Agreement DIR provides written notice to IBM of a price which does not meet the above, following confirmation by IBM the price for that item under this Agreement will be lowered by IBM for DIR. This notice and cure procedure is the sole and exclusive remedy available for any failure to achieve the intention of this paragraph and is subject to the terms of this Participating Addendum and the Agreement.

26. Trade Shows

IBM understands and agrees that it must participate fully by providing a manned booth display or similar presence at no less than two trade shows or similar functions sponsored by DIR each calendar year, at the Vendor's expense.

C. LEASE AGREEMENTS

Lease agreement terms and conditions have not been approved for use by Procuring Agencies within the State of Texas.

D. PRIMARY CONTACT

The primary contact individual for this Participating Addendum is as follows:

Bill Peek
Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, TX 78701
Telephone:
e-mail: bill.peek @ dir.state.tx.us

E. PRICE AGREEMENT NUMBER

All purchase orders issued by Procuring Agencies within the State of Texas shall include the following price agreement number: 94-00151.

This Addendum and the Price Agreement together with its exhibits and attachments, sets forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Addendum has been executed by the duly authorized representatives of the parties.

Contractor:

THE STATE OF TEXAS, acting by and

State of Texas Participating Addendum
WSCA / IBM Master Price Agreement #94-00151

**INTERNATIONAL BUSINESS
MACHINES CORPORATION**

By: Ronald E. Wilt

Name: Ronald E. Wilt

Title: Client Executive

Date: July 20, 2001

through the Department of Information
Resources

By: Patrick W. Hogan

Name: Patrick W. Hogan

Title: Director

Date: July 24, 2001

**AMENDMENT NO. 1
TO
PARTICIPATING ADDENDUM
For
STATE OF TEXAS**

And

**INTERNATIONAL BUSINESS MACHINES CORPORATION (IBM)
WESTERN STATES CONTRACTING ALLIANCE
PRICE AGREEMENT
94-00151**

THIS AMENDMENT NO. 1 ("Amendment") to the Participating Addendum of the Western States Contracting Alliance (WSCA) Master Price Agreement (Agreement) is made and entered into by and between International Business Machines Corporation, and the State of Texas, acting by and through the Department of Information Resources.

THE PARTIES, intending to be legally bound, hereby agree as follows:

1. Section "B", as defined in the Addendum as Applicable Approved Purchasing Agreement, the last sentence of the first paragraph will change to read; "This Agreement is limited to the sale of IBM microcomputers and IBM pSeries Server product lines as awarded to IBM based on the Texas Market Place Posting Numbers DIR-61900-HWARE and DIR-TMP-02-021.

IN WITNESS WHEREOF, the Parties of this Amendment have executed this Amendment through the signature of their duly authorized representatives.

International Business Machines Corp.

By: Ron Wilt

Printed Name: Ron Wilt

Title: Business Unit Executive

Date: March 21, 2002

Texas Department of Information Resources

By: Patrick Hogan

Printed Name: : Patrick Hogan

Title: Director of Business Operation

Date: 4-1-02

Legal: JK

AMENDMENT NUMBER 2
to
PARTICIPATING ADDENDUM
for
STATE OF TEXAS
WESTERN STATES CONTRACTING ALLIANCE

INTERNATIONAL BUSINESS MACHINES CORPORATION
TO MASTER PRICE AGREEMENT
94-00151

This amendment is hereby affixed to and shall become a part of the Participating Addendum to the Western States Contracting Alliance (WSCA) Master Price Agreement effective July 24, 2001 ("Addendum") between International Business Machines Corporation ("IBM" or "Contractor") and the State of Texas, acting by and through the Department of Information Resources ("DIR"). This Amendment Number 2, as incorporated into the Contract, is subject to all terms, conditions, restrictions and limitations contained in the Contract not in conflict with this Amendment including the limitation of liability provision. The Contract is hereby modified as follows:

1. The new definition for "Reseller" is added to Section B.1 as follows:

"Reseller" is a distributor, dealer, or value-added reseller designated by the Contractor who participates as a named distribution source for the IBM pSeries product line for the Contractor.

2. **Section 15, Technology Access**, is hereby restated as follows:

Contractor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Contractor represents and warrants to DIR and each Customer purchasing products under this Participating Addendum that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

3. **New Section 27, Use of Resellers**, is as follows:

Contractor shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State of Texas. DIR agrees to permit Contractor to utilize designated Resellers who participate as a named distribution source for the IBM pSeries product line so that sufficient resources are available to ensure adequate service capability throughout the State. Such participation is subject to the following conditions:

A. Designation of Resellers

Contractor shall designate Resellers to participate under this Participating Addendum to act as product/order distributors of the IBM pSeries product line. DIR has the right to require any such Reseller participation or request that Contractor name additional Resellers should DIR determine it is in the best interest of the State.

Contractor shall have the right to qualify Resellers and their participation as fulfillment agents under this Participating Addendum by product line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria, provided that: i) such criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; and ii) all general categories of criteria are fully covered by participating Resellers to meet the needs of Customers.

B. Changes in Reseller List

Contractor may add and/or delete Resellers throughout the term of the Participating Addendum. However, the Contractor must geographically provide adequate coverage to the entire State.

C. Conditions of Reseller Participation

All participating Resellers must be approved Catalog Information Systems Vendors with the State of Texas. Contractor shall make best effort to name one or more Historically Underutilized Businesses as Reseller.

D. Responsibility for Reseller Performance and Reporting

Contractor shall be fully liable for Resellers performance and compliance with all Participating Addendum terms and conditions herein. Contractor shall be responsible for reporting all products and services purchased through Resellers, in accordance with Section 11, as defined in the Addendum as Administration Reporting and Fees.

E. Available Products and Services

Products and services ordered directly through Resellers shall be limited to the IBM pSeries products and services and shall be subject to all terms and conditions of this Participating Addendum as a condition of Reseller participation.

G. Reseller Pricing to Customer

Pricing discount to the Customer shall be the advertised WSCA price as stated in Section 25, as defined in the Addendum as Prices. Reseller may offer higher discounts for larger volume purchases or special promotional offers.

Contractor represents that it shall not, directly or indirectly, by agreement, communication or any other means restrict any Reseller's participation or ability to quote a particular order; or prohibit Reseller from participating in other procurement opportunities offered through DIR.

4. **New Section 28, Handling of Written Complaints**, is as follows:

In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 475-4700, voice
(512) 475-4759, fax

All other terms and conditions of the Participating Addendum not specifically modified herein shall remain in full force and effect. This Amendment Number 2 is executed to be effective as of the last date of approval by the parties and remain in effect until August 31, 2004.

**INTERNATIONAL BUSINESS
MACHINES CORP.**

By: Ronald E. Wilt

Name: Ronald E. Wilt

Title: Client Unit Executive

Date: December 22, 2003

**STATE OF TEXAS
acting by and through the
DEPARTMENT OF
INFORMATION RESOURCES**

By: Patrick W. Hogan

Name: Patrick W. Hogan

Title: Director of Business Operations

Date: 1-6-04

Legal: [Signature]
12/30/03